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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.11.2006

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

W.A.No.25 of 2006
and
W.A.M.P.Nos.51 & 960/2006

1. State Bank of India
rep. by its Chief General Manager,
Local Head Office,
16, College Lane,
Chennai 600 006.

2. Assistant General Manager (PPG)
State Bank of India,
Local Head Office,
16, College Lane,
Chennai 600 006. ... Appellants

vs.

P.Sarathy ... Respondent

Appeal under Clause 15 of Letters Patent against the order of the learned single Judge, dated 12.09.2005, made in W.P.No.12138/2003.

For Appellants : Mr.V.T.Gopalan, Senior Counsel
for Mr.T.S.Gopalan.

For Respondent : Mr.K.M.Ramesh

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

Aggrieved by the Common Order of the learned single Judge, dated 12.09.2005, **(*)** directing the State Bank of India (SBI) to pay interest on the Provident Fund (P.F.) amount upto 27.06.2000 within a period of three months from the date of receipt of copy of the order, the respondents/SBI have preferred the above Appeal.

2. According to the appellants, SBI was constituted by the State Bank of India Act, 1955. Section-50 thereof empowers the Central Board of the Bank to make regulations among others to provide for the establishment and maintenance of a superannuation pension, P.F. or

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other funds for the benefit of the employees. Pursuant to Section 5(2)(O) of the said Act, the Central Board framed regulations to provide for the establishment and maintenance of a provident for the benefit of the employees of the Bank, which regulations are known as State Bank of India Employees' Provident Fund Rules (hereinafter referred to as 'Rules') and the fund is called as the State Bank of India Employees' Provident Fund. The P.F. is administered by a Board of Trustees. The Rules of Provident Fund framed by the Central Board is governed by Provident Fund Act, 1925.

Rule-12 of the Rules provides that every member shall subscribe towards the fund in each month a sum equivalent to a specified percentage of his salary and such subscriptions shall be credited to the individual's account in the books of the Provident Fund and a sum equal to that subscribed by a member shall also be contributed by the Bank monthly and credited to his account. The Bank maintains the account of the trust. Every employee, who joins the P.F. Scheme, is required to submit a prescribed application form and thereafter he is admitted to the Scheme. As per Rule 41 of the Rules, every employee, while joining the P.F. Scheme, should subscribe to an agreement declaring that he has read and understood the Rules and subscribes and agrees to be bound by the Rules.

As the subscription made to the P.F. account is a compulsory deposit under the statute for the fixed period till continuation of employment and not drawable on demand, interest is payable till the employee ceases to be in service of the Bank. After cessation of service, the P.F. balance is payable only on demand. The above provisions are made known to all the employees, who become members of the P.F. Scheme, who after reading and understanding the Rules, sign the declaration that they subscribe and agree to be bound by the said Rules. The Trustees should be informed by the employees about the date of retirement / termination for claiming payment of the P.F. amount. Every member of the P.F. Scheme has to make a demand on attaining superannuation or on the happening of any specified contingency or cessation.

On the charges levelled against the respondent/writ petitioner, after enquiry, on 11.01.1983, he was removed from the service of the Bank. He was pursuing the litigation, challenging his removal from service, however, he did not make an application for payment of the P.F. amount as required under the Rules. The respondent/petitioner is not entitled to interest inasmuch as Rule 33 of the Rules stipulates that interest on all monies standing in the book of fund to the credit of a member would cease on the day he leaves the service of the Bank. When the petitioner did not care to make a claim for the P.F. amount till 2000, it would not be open for him to contend that the Bank should pay interest on the P.F. amount merely because the amount was lying with it.

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3. The respondent-writ petitioner filed WP No.20802/02, questioning the proceedings of the Assistant General manager, SBI, dated 04.12.2001, and for directing the SBI to consider his claim for pension under the Rules and also to settle the PF amount with up-to-date interest. In WP. No.12138 of 2003, the same petitioner prayed for issuance of a writ of declaration to declare Rule 33 of the Rules as arbitrary, unreasonable, illegal, unconscionable and opposed to public policy insofar as the petitioner is concerned.

4. The learned single Judge, accepting the case of the Writ Petitioner, set aside the order dated 04.12.2001 with liberty to the Bank to pass fresh orders considering his claim that his services in State Bank of Mysore should be added for qualifying service. In the same order, the learned Judge directed the Bank to pay interest on his P.F. amount upto 27.06.2000 after arriving at the due total amount within a period of three months from the date of receipt of a copy of the said order. Questioning the direction relating to payment of interest on the P.F. amount, the SBI has filed the above appeal.

5. Heard Mr.V.T.Gopalan, learned Senior Counsel for the appellants/Bank and Mr.K.M.Ramesh, learned counsel for the respondent.

6. In this Writ Appeal, we are only concerned with the direction of the learned Judge for payment of interest on the P.F. amount upto 27.06.2000. In other words, whether the writ petitioner is entitled to interest on his P.F. amount after cessation of his service from the Bank when apparently he did not make a demand for payment.

7. It is not in dispute that the subscription made to P.F. Account is a compulsory deposit under the statute for the fixed period till continuation of employment and interest is payable till the employee ceases to be in service in the Bank. We have already mentioned that under the Act, SBI is empowered to frame separate Rules in respect of their Employees' Provident Fund. They also framed the Rules known as the State Bank of India Employees' Provident Fund Rules. Amongst the Rules, Rule-33 is relevant,

> " 33. Interest on all monies standing in the books of the fund to the credit of a member shall cease on the day he leaves the service of the Bank or the day on which he dies, whichever event shall first happen. "

Section 2 Clause (1) of the Provident Fund Act defines P.F. as a compulsory deposit which under the Rules of the Fund is not, until the happening of some specified contingency, repayable on demand. The said P.F. Act protects deposits both during the lifetime of and after the death of the depositor against any statutory or judicial attachments.

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8. Mr.K.M.Ramesh, learned counsel appearing for the respondent/writ petitioner contended that as per Rules, it is the duty of the employer/here Trustees of the Fund to intimate the employee and make payment. In the light of the specific provision in Rule 33 of the Rules, we are of the view that after cessation of service, the employee is required to make a demand for refund of the P.F. balance and then only it becomes payable. As rightly pointed out by the learned Senior Counsel for the Bank, if the service of the employee is terminated as a result of disciplinary action, the Provident Fund balance becomes ready for settlement and, even after making a request for payment of the P.F. balance lying in his credit, he can contest the order of the disciplinary authority before different forums, viz., Appellate Authority, Reviewing Authority or by filing writ in the High Court and Appeal up to the Supreme Court, however, if he feels the acceptance of the Provident Fund does prejudice his case, he has to obtain necessary order for keeping the P.F. amount in fixed Deposit and if he does not obtain such order, the Bank cannot pay interest on the said amount. Further, some employees may, even after cessation of employment, purposely leave the amount under the fund as the P.F. interest rate offered by the Board is higher than the deposit rates prevailing in the Banks. It is also brought to our notice that the interest income on P.F., which was not withdrawn, is eligible for tax benefit. Therefore, if delay is not due to laches on the part of the Bank, the employee cannot be entitled to interest on the said amount.

9. It is also brought to our notice that in the light of Rule 33, the Bank issued administrative guidelines. Even as early as in 1978, by letter dated 02.11.1978, the Chief General Managers of all Branches intimated to their employees the following information:-

> " .....
> 2. While the above concession was extended by us in view of the administrative delays that may occur in the settlement of Provident Fund dues of employees after the concerned employees actually retire, experience has shown that such interest is being claimed by certain employees even if the delay is mainly attributable to the employee themself due to his not submitting the application for refund. We therefore wish to clarify that interest at Savings Bank Staff Rate should be paid from the date of the employee's application for refund of the Provident Fund balance or from the date of retirement, whichever is later, to the actual date of payment of the Provident Fund balances. Please bring the contents of this letter to the notice of all employees in our Circle. "

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It is not in dispute that P.F. is managed by the Trustees and that they should be informed by the employees about the date of retirement / termination to claim payment of their P.F. amount. It is brought to our notice that the Bank issued another Circular dated 17.03.1981, wherein, the interest to be paid in the aforesaid circumstances was stipulated at the applicable rate payable on P.F. balances instead of Savings Bank interest rate from the date of application by the employee till payment. We are of the view that a member to the P.F. Scheme ceases to be a depositor of the fund for a fixed period by force of the statute after his leaving the service of the Bank and the amount of P.F. deposit becomes a demand deposit.

10. Coming to the case of the respondent/petitioner, it is brought to our notice that, at the time of admission to the P.F., he had subscribed to the Rules, therefore, it cannot be said that he was not put on notice about Rule-33. In such case, it was for the petitioner to apply for settlement of his dues immediately after his cessation of employment. It is not in dispute that he was removed from service by the Bank on 11.01.1983. It is equally true that he was questioning the order of removal by way of departmental appeal, review, civil suit, writ petition in this Court and even went upto the Supreme Court. Merely because he was agitating his order of removal before various authorities, it cannot be said that, for the entire period, interest is payable on his P.F. amount.

11. With regard to the validity of Rule-33 of the Rules, the learned Judge, though has not gone into the said aspect in detail, in paragraph No.15, has observed that " It is true that it is the responsibility of the employee to seek for finalisation of the Provident Fund amounts. ....." Since the petitioner succeeded before the learned Judge and there was no exhaustive discussion relating to the validity of the said Rule, we heard Mr.Ramesh, learned counsel for the respondent/writ petitioner, on the aspect as to how the said Rule is arbitrary, unconscionable and opposed to public policy. As said earlier, he once again pointed out that inasmuch as the SBI did not offer to settle the petitioner's P.F. amount as soon as he was removed from service and has been holding the said amount all these years, the Bank is liable to pay interest thereon for the entire period, hence, to say that the amount lying in the P.F. account would not earn interest and that the account would cease on the date of removal from service is arbitrary, illegal, unconscionable and opposed to public policy.

12. We have already extracted Rule-33 and also pointed out that, even according to the learned Judge, the argument of the petitioner is not acceptable with regard to validity of the said Rule. In the earlier part of our Judgment, we have observed that as soon as the service of an employee comes to an end or he ceases to be an employee, it is but proper for him to make a demand to the Board of

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Trustees to pay the P.F. balance. Without doing so, if the aggrieved person challenges the order of removal or cessation of service before appropriate forum, there must be an order/observation for keeping the amount in a separate account and a blanket direction for payment of interest on the P.F. amount that too in violation of the statutory provision cannot be sustained. In this regard, learned Senior Counsel for the Bank heavily relied on a decision of the Apex Court reported in 2000 (10) SCC 664 (Narmada Bachao Andolan v. Union of India). In the said decision, Their Lordships have held that no directions are issued which are in conflict with any legal provisions and directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental rights or other legal provisions. The following conclusion in paragraph No.233 is relevant:-

> " 233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law. "

13. It is the duty of the Court to dispense justice in accordance with law. When the statutory provision is valid, it is not for the Court to issue a direction contrary to the said provision. In the case on hand, the learned Judge himself has not accepted the case of the petitioner that the Rule is opposed to public policy. While so, we are of the view that, having found that the Rule is valid, there cannot be any direction to the Bank, in violation of the provision thereof. As observed by the Hon'ble Supreme Court, without striking down the statute/provision, here Rule-33, the Court cannot issue a direction, which runs contra to the provision. We are satisfied that Rule-33 is valid in law and based on sound reasoning.

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The Bank is not bound or liable to pay interest to a member, who is no longer in employment. If the member has not chosen to receive his P.F. dues on his cessation of employment by making a demand as provided in the Rules and as agreed to by him before becoming a member of the Scheme, without an order/observation by the authority under Rules or judicial authority, he cannot claim any interest for the period subsequent to the cessation of his employment. We have already referred to the fact that the condition laid down in Rule-33 was made known to all employees, who are admitted to as members of the Fund after having agreed to those conditions stipulated by the Rules. We are of the view that the claim for interest contrary to the said Rule cannot be sustained. As per the Rule, interest should be paid to a member only during his tenure of employment and not thereafter, however, if it is established that the delay was not at the instance of the employee, he is entitled to interest till the amount is settled. The failure of the writ petitioner to apply for his settlement of P.F. dues because he was challenging the order of dismissal cannot be a ground to claim any benefit which is not provided for in the PF Rules. Inasmuch as the respondent/petitioner did not care to claim the PF amount after his removal from service on his own free will, the Bank cannot be fastened with the liability to pay interest on the PF accumulation after the date of his removal from service. Any positive direction would go run contra to Rule-33 of the Rules. We further clarify that unless the employee claims the amount lying in the fund, no amount can be payable and having made a claim very belatedly, he cannot be allowed to claim interest. These relevant aspects have not been considered by the learned Judge while directing payment of interest on the P.F. amount. We accept the stand taken by the appellants/Bank.

Consequently, the order of the learned Judge, dated 12.09.2005, insofar as directing the SBI for payment of interest upto 27.06.2000 on the respondent/writ petitioner's P.F. amount is set aside. Writ Appeal is allowed. No costs. Connected Miscellaneous Petitions are closed.

JI.

Sd/
Asst.Registrar
6.12.2006

*Amended as per the order of the Court
dated 26.2.2007 and made herein.
Sd/-Asst Registrar
21.3.2007

/true copy/

Sub Asst.Registrar

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To

1. The Chief General Manager,
State Bank of India
Local Head Office,
16, College Lane,
Chennai 600 006.

2. The Assistant General Manager (PPG)
State Bank of India,
Local Head Office,
16, College Lane,
Chennai 600 006.

ONE CC TO MR.T.S. GOPALAN, ADVOCATE SR 56682

ONE CC TO MR.K.M. RAMESH, ADVOCATE SR NO 11388

Judgment in
MA(CO) Writ Appeal No.25 of 2006
BP/7.12 & connected M.Ps.
SR/22.3.2007

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